

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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JAYSON G. MIRANDA,

Plaintiff,

v.

FCA US, LLC; SACRAMENTO CHRYSLER
DODGE JEEP RAM; and DOES 1
through 10, inclusive,

Defendants.

No. 2:20-cv-00803 WBS EFB

MEMORANDUM AND ORDER RE:
MOTION TO REMAND

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Plaintiff Jayson G. Miranda filed this action against defendants FCA US, LLC, Sacramento Chrysler Dodge Jeep Ram ("SCDJR"), and Does 1 through 10, alleging various warranty and negligence claims arising from the sale of a defective Dodge vehicle. Before the court is plaintiff's motion to remand. (Docket No. 10.)

I. Relevant Factual and Procedural Background

Plaintiff purchased a 2015 Dodge Ram 2500 (the "vehicle"). (Compl. ¶ 8 (Docket No. 1).) In connection with the

1 purchase of the vehicle, plaintiff received an express written
2 warranty which provided, in relevant part, that in the event the
3 vehicle developed a defect during the warranty period, plaintiff
4 could deliver the vehicle for repair services to defendant FCA
5 US's "representative," defendant SCDJR, and the vehicle would be
6 repaired. (Id. ¶ 9.) During the warranty period, plaintiff's
7 vehicle developed defects various defects. (Id. ¶ 10.) As a
8 result, the use, value, or safety of the vehicle was
9 substantially impaired. (Id.) Defendants were unable to repair
10 the vehicle to conform to the applicable express warranties after
11 a reasonable number of opportunities. (Id. ¶ 11.)

12 Plaintiff filed suit in state court alleging seven
13 causes of action. Against defendant FCA only, the complaint
14 alleged (1) violation of Civil Code Section 1793.2(d); (2)
15 violation of Civil Code Section 1793.2(b); violation of Civil
16 Code Section 1793.2(a)(3); (4) breach of express written
17 warranty, Civ. Code § 1791.2(a); (5) breach of implied warranty
18 of merchantability, Civ. Code §§ 1791.1, 1794, & 1795.5; (6) and
19 fraud by omission. (See generally Compl.) Against defendant
20 SCDJR only, the complaint alleged a claim for negligent repair
21 (Count Seven). (Id.)

22 Defendants subsequently removed the action to federal
23 court under diversity jurisdiction. (Notice of Removal (Docket
24 No. 1).) Defendants allege that, although SCDJR is a citizen of
25 California, such that its involvement in this action would
26 destroy complete diversity, plaintiff's joinder of SCDJR was
27 fraudulent and therefore does not defeat diversity. (Id. at 8-
28 9.) Plaintiff now moves to remand alleging in turn that the

1 court does not have original jurisdiction over this action.

2 (Mot. to Remand at 1.)

3 II. Discussion

4 A. Motion to Remand

5 A defendant may remove “any civil action brought in a
6 State court of which the district courts . . . have original
7 jurisdiction.” 28 U.S.C. § 1441. Original jurisdiction in the
8 form of diversity jurisdiction exists where there is complete
9 diversity and the amount-in-controversy exceeds \$75,000. 28
10 U.S.C. § 1332(a); Caterpillar Inc. v. Lewis, 519 U.S. 61, 68
11 (1996). “In determining whether there is complete diversity,
12 district courts may disregard the citizenship of a non-diverse
13 defendant who has been fraudulently joined.” Grancare, LLC v.
14 Thrower by & through Mills, 889 F.3d 543, 548 (9th Cir. 2018).
15 “There are two ways to establish fraudulent joinder: ‘(1) actual
16 fraud in the pleading of jurisdictional facts, or (2) inability
17 of the plaintiff to establish a cause of action against the non-
18 diverse party in state court.’” Id. (quoting Hunter v. Philip
19 Morris USA, 582 F.3d 1039, 1044 (9th Cir. 2009)).

20 Here, defendants allege that SCDJR was fraudulently
21 joined because plaintiff cannot establish a cause of action
22 against SCDJR. (Opp’n at 18 (Docket No. 11).) To establish
23 fraudulent joinder, defendants must therefore show that SCDJR
24 “cannot be liable on any theory.” Id. (quoting Ritchey v. Upjohn
25 Drug Co., 139 F.3d 1313, 1318 (9th Cir. 1998)). The failure to
26 state a cause of action must be “obvious according to the settled
27 rules of the state.” Morris v. Princess Cruises, Inc., 236 F.3d
28 1061, 1067 (9th Cir. 2001). “[I]f there is a possibility that a

1 state court would find that the complaint states a cause of
2 action against any of the resident defendants, the federal court
3 must find that the joinder was proper and remand the case to the
4 state court.” Grancare, 889 F.3d at 549 (quoting Hunter, 582
5 F.3d at 1046); see also Madison v. Ford Motor Co., No. 2:19-CV-
6 00853 WBS DB, 2019 WL 3562386, at *2 (E.D. Cal. Aug. 6, 2019).
7 Defendants bear “a ‘heavy burden’ since there is a ‘general
8 presumption against [finding] fraudulent joinder.’” Id. (quoting
9 Hunter, 582 F.3d at 1046).

10 Here, plaintiff pleads only a state law claim for
11 negligent repair against defendant SCDJR. Defendants contend
12 that plaintiff cannot plead such a claim because the economic
13 loss rule bars recovery. (Opp’n at 19-21.) But “California law
14 is not so settled that a plaintiff could not possibly recover
15 against a dealership for negligent repair of a vehicle.” Lytle
16 v. Ford Motor Co., No. 2:18-CV-1628 WBS EFB, 2018 WL 4793800, at
17 *2 (E.D. Cal. Oct. 2, 2018) (citing Forward-Rossi v. Jaguar Land
18 Rover N. Am., LLC, No. 216CV00949CASKSX, 2016 WL 3396925, at *4
19 (C.D. Cal. June 13, 2016)). Indeed, as this court recently
20 noted, “every district court to consider this issue has found
21 that such a claim is at least possible, regardless of the
22 economic loss rule.” Ram v. FCA US LLC, No. 2:20-CV-00319 WBS
23 CKD, 2020 WL 3178388, at *2 (E.D. Cal. June 15, 2020) (citing
24 Sabicer v. Ford Motor Co., 362 F. Supp. 3d 837, 841 (C.D. Cal.
25 2019); Viramontes v. FCA US LLC, No. 20-cv-2046-MWF (JCX), 2020
26 WL 2318203, at *4 (C.D. Cal. May 11, 2020); Simmons v. Ford Motor
27 Co., No. 19-CV-04802-EJD, 2020 WL 1151197, at *2 (N.D. Cal. Mar.
28 10, 2020); Krasner v. Ford Motor Co., No. 18-cv-01602 TLN KJN,

1 2019 WL 1428116, at *4 (E.D. Cal. Mar. 29, 2019); Madison, 2019
2 WL 3562386, at *2). Because it is possible that SCDJR could be
3 liable for negligent repair, SCDJR was properly joined. See
4 Grancare, 889 F.3d at 548.

5 Defendants rely on In re Ford Motor Co. DPS6 Powershift
6 Transmission Products Liability Litigation, No. 18-ML-02814 AB
7 (FFMX), 2018 WL 5905942 (C.D. Cal. Sept. 10, 2018), where the
8 court found that joinder was fraudulent. This court declines to
9 follow the In re Ford reasoning. First, the In re Ford
10 plaintiffs' negligent repair claims against the dealers included
11 allegations that the defects were "irreparable." Id. at *6. As
12 a result, the court reasoned that "[i]f Plaintiffs' vehicles were
13 plagued by defects that were irreparable, that would break any
14 causal connection between the Dealers and the Plaintiffs' alleged
15 arm." Id. Given those allegations, the court found that
16 plaintiffs could not state a claim against the dealers. Id. By
17 contrast, no such allegations are present here.

18 Second, the In re Ford court relied on the
19 insufficiency of the allegations in the complaint to determine
20 that a claim against the dealers was not possible. Id. at *6.
21 The sufficiency of the governing complaint, however, does not
22 determine whether a defendant was fraudulently joined. See
23 Robles v. FCA US LLC, No. 2:20-CV-02546-SVW-SK, 2020 WL 2318205,
24 at *2 (C.D. Cal. May 8, 2020) (declining to follow In re Ford
25 because the "appropriate fraudulent joinder analysis" requires
26 the court to consider whether leave to amend can cure the
27 deficiency); Carrillo v. FCA US LLC, No. EDCV 20-481 JGB SHKX,
28 2020 WL 2097743, at *3 (C.D. Cal. May 1, 2020) (same). Where the

1 complaint is deficient, "the district court must consider . . .
2 whether [the] deficiency . . . can possibly be cured by granting
3 the plaintiff leave to amend." Id. at 550. "[A]ny possibility"
4 that the joined defendant could be liable suffices to find proper
5 joinder. Grancare, 889 F.3d at 549.

6 Although defendants may be correct that plaintiff fails
7 to allege facts surrounding the circumstances of the storage and
8 repair of the vehicle, or facts to support an exception to the
9 economic loss rule (Opp'n at 21), defendants offer no evidence or
10 argument to show that plaintiff could not include those
11 allegations in an amended complaint. Cf. Carrillo, 2020 WL
12 2097743 ("It is entirely plausible that Plaintiffs could amend
13 their complaint and include allegations regarding damage to their
14 property caused by the negligent repair."); Arias v. FCA US LLC,
15 No. 20-CV-02100 CJC (JDEX), 2020 WL 1809666, at *2 (C.D. Cal.
16 Apr. 9, 2020) ("Although the facts underlying Plaintiff's claim
17 are not highly detailed, this potential deficiency -- if there is
18 one at all -- could easily be cured by granting Plaintiff leave
19 to amend."); see also Grancare, 889 F.3d at 548 ("We have also
20 upheld [rulings of fraudulent joinder] where a defendant presents
21 extraordinarily strong evidence or arguments that a plaintiff
22 could not possibly prevail on her claims against the allegedly
23 fraudulently joined defendant.") (emphasis added) (citing McCabe
24 v. Gen. Foods Corp., 811 F.2d 1336, 1339 (9th Cir. 1987); United
25 Comput. Sys. Inc. v. AT&T Corp., 298 F.3d 756, 761 (9th Cir.
26 2002); Kruso v. Int'l Tel. & Tel. Corp., 872 F.2d 1416, 1426-27
27 (9th Cir. 1989)). Because defendants have not made such a
28 showing, they fail to carry their heavy burden of establishing

1 improper joinder. The court thus finds that joinder was proper.
2 See Grancare, 889 F.3d at 549.

3 Accordingly, because both SCDJR and plaintiff are
4 citizens of California, the parties are not completely diverse,
5 and this court does not have original jurisdiction over the
6 action. The court will therefore remand this action.

7 B. Dismissal of SCDJR under Rule 21

8 A court "may cure jurisdictional defects by dismissing
9 dispensable nondiverse parties under Federal Rule of Civil
10 Procedure 21." Madison, 2019 WL 3562386, at *4 (citing Newman-
11 Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 832-33 (1989)).
12 Defendants ask the court to exercise its discretion under Rule 21
13 and to dismiss SCDJR as a party to preserve complete diversity.
14 (Opp'n at 22.) The court declines to do so. As this court has
15 recently found in nearly identical circumstances, "severance
16 'would defeat the purpose of permissive joinder' -- convenience
17 and efficiency." See e.g., Ram, 2020 WL 3178388, at *2. Here,
18 "the claims against both defendants are sufficiently intertwined,
19 factually and legally, such that severance would be inconvenient
20 and inefficient." See id. Accordingly, the court will not
21 dismiss SCJDR from this litigation.

22 IT IS THEREFORE ORDERED that plaintiff's motion to
23 remand (Docket No. 10) be, and the same hereby is, GRANTED.¹

24 Dated: July 16, 2020



25 WILLIAM B. SHUBB
26 UNITED STATES DISTRICT JUDGE

27 _____
28 ¹ Plaintiff has not requested attorney's fees. The court
therefore will not consider them.